



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/030,818 Confirmation No. : 2416
First Named Inventor : Hans BRUDER
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Examiner : Victor L. MACARTHUR

Docket No. : 396/50809
Customer No. : 23911

Title : SUPPORTING PROFILE

Mail Stop Appeal Brief- Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

In response to the Examiner's Answer dated November 23, 2004, Appellant is compelled to reply to the following erroneous points raised in the Answer:

Rejection of Claim 10 under 35 U.S.C. §102(b) as being anticipated by Monti (U.S. Patent 4,410,157)

In the Examiner's Answer, the Examiner makes several arguments in connection with this rejection. First, in response to Applicant's argument that Monti does not disclose a single supporting profile that *includes* components from two supporting members 14A and 14B, the Examiner argues that the limitation "includes" is not recited in the claim. The Examiner also argues that the limitation "belong to" is not synonymous with the word "comprising" and is not recited in the claim.

It appears to Applicant that a fundamental disagreement between Applicant and the Examiner is on the interpretation of Claim 10. Applicant believes that the term "comprising" in Claim 10 requires that a *single* supporting

profile that *includes* a disk-shaped end piece or that the disk-shaped end piece *belongs to* the supporting profile. The Examiner apparently disagrees.

The rules on claim interpretation, as set forth in numerous Federal Circuit decisions, are as follows. During examination, claims are to be given their broadest reasonable interpretation consistent with the specification. In re Bond, 910 F.2d 831, 833 15 USPQ2d 1566 (Fed. Cir. 1990). This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Plain meaning refers to the ordinary and customary meaning given to the term by those of ordinary skill in the art. The Manual of Patent Examining Procedure, 8th ed., rev. 1 §2111.01 (2003) (citing Federal Circuit decisions). Dictionary definitions can be used to determine the ordinary and customary meaning of the words. Ferguson Beauregard/Logic Controls v. Mega Systems, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003).

In the present case, a dictionary definition of the word “comprise” is to include. The American Heritage Dictionary of the English Language, Fourth Edition, 2000. Additionally, it is one of the most fundamental principles of patent law that the words “comprising” and “including” are synonymous. For example, the Manual of Patent Examining Procedure (MPEP) provides that “[t]he transitional term ‘comprising,’ ...is synonymous with ‘including,’ ‘containing,’....” MPEP, §2111.03. Therefore, since Claim 10 recites a supporting profile *comprising* a disk-shaped end piece, which is the same as a supporting profile *including* a disk-shaped end piece.

Additionally, a search at dictionary.com shows that the word “comprise” means “to have as a component.” Thus, Claim 10 requires that a supporting profile has a disk-shaped end piece as a component. Monti, in contrast, discloses

that the lower end cap (46) of support member **14B** is not a component of supporting profile **14A**.

Regarding the word "belong," its dictionary definition is "to be a part of something else." The American Heritage Dictionary of the English Language. Therefore, a disk-shaped end piece *belonging to* a supporting profile simply means that the disk-shaped end piece is a part of the supporting profile. It also means that the supporting profile has the disk-shaped end piece as a part (or a component). It further means that the supporting profile comprises the disk-shaped end piece. In other words, a supporting profile comprising a disk-shaped end piece is the same as a disk-shaped end piece belonging to a supporting profile. Accordingly, Claim 10 requires that the disk-shaped end piece belongs to the supporting profile. Monti, however, specifies that the lower end cap (46) of support member **14B** is not a component of supporting profile **14A**.

In response to Applicant's argument that the lower end cap (46) of Monti is not disk-shaped, the Examiner contends that the disk-shaped end piece (5) shown in the drawings of the present application is not a perfect disk. Although the disk-shaped end piece (5) may not be a perfect disk, it is substantially disk-shaped because it is a thin, flat, circular plate with two flat, circular surfaces, except a thin, elongated area which is connected to the first disk (9). The American Heritage Dictionary of the English Language (a disk is a thin, flat, circular plate). In Monti, on the other hand, the lower end cap (46) has only one flat, circular surface, and therefore cannot form a thin, flat, circular plate. Even the disk body (15) of the present application is substantially a thin, flat, circular plate with two flat, circular surfaces, except an attachment (16) along a small portion of the disk body's edge (Figure 5).

Finally, although the Examiner no longer equates "functional recitation" with "intended use," he still maintains that the phrase "for receiving a

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turnbuckle" is directed to intended use, now on a different ground that a turnbuckle is neither recited in the claim nor shown in the drawings. However, the Examiner cites no authority that supports his standard for determining "intended use." Therefore, the Examiner has not established the phrase "for receiving a turnbuckle" is directed to the intended use of the receiving chamber.

In fact, the claim language "a receiving chamber for receiving a turnbuckle" defines the receiving chamber in terms of its function and should be construed under 35 U.S.C. 112, sixth paragraph. Mas-Hamilton Group v. LaGard Inc., 156 F.3d 1206, 1213, 48 USPQ2d 1010, 1016 (Fed. Cir. 1998) ("lever moving element for moving the lever" and "movable link member for holding the lever and for releasing the lever" were construed as means-plus-function limitations invoking 35 U.S.C. 112, sixth paragraph since the claimed limitations were described in terms of their function not their mechanical structure). When an element is claimed using language falling under the scope of 35 U.S.C. 112, 6th paragraph, the specification must be consulted to determine the structure, material, or acts corresponding to the function recited in the claim. In re Donaldson, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994). In the specification (see, e.g., the paragraph bridging pages 7 and 8 of the substitute specification), Applicant describes the structure of the receiving chamber (23) (i.e., a rectangular opening) for receiving a turnbuckle. The Examiner has failed to consult the specification, as required by In re Donaldson, to determine the structure of the receiving chamber that corresponds to the function of "receiving a turnbuckle." The mere assertion that the threaded bore (66) is inherently capable of receiving a turnbuckle that is small enough to fit therein, without an explanation and consultation to the specification, is insufficient.

Rejection of Claim 11 under 35 U.S.C. §102(b) as being anticipated by Monti

In Finding 6 of the Examiner's Answer the Examiner, referring to Figure 3 of Monti, contends that a curved portion of the radiused end portion (64) of a lower end cap, which is designated by the Examiner with reference numeral 200 in the final Office Action, is adapted by a T-bolt (82) to an external curvature of a round profile of an elongate support member (14) near a T-slot (20). Additionally, the Examiner now contends that the word "adapt" means "mere connection via intervening members." However, the Examiner provides no sources for this meaning of the word "adapt."

The dictionary definition of the word "adapt" is "to make to fit," and the dictionary definition of the word "fit" is "to be the proper size and shape for." The American Heritage Dictionary of the English Language. In other words, the dictionary definition of the word "adapt" is to make to be the proper size and shape for. In Claim 11, therefore, the concave recess is made to be the proper size and shape for an external curvature of a round profile. In Monti, on the other hand, the curved portion of the radiused end portion (64) cannot be made by the T-bolt (82) to be the proper size and shape for an external curvature of an elongate support member (14).

Rejection of claim 13 under 35 U.S.C. §102(b) as being anticipated by Monti

In Finding 7 of the Examiner's Answer the Examiner, referring to Figures 2 and 3 of Monti, contends that the lower end cap (46, or 200 using Examiner's designation) of supporting member 14B is the end piece of Claim 13 and the clamping assembly (28) is the joint of Claim 13. The Examiner also contends that Claim 13 does not recite that the joint is a part of the end piece.

Claim 13 recites that the end piece has a joint. The transitional term "has," just like the transitional terms "comprise" and "include," specifies that the joint is a component or part of the end piece (see the discussion on transitional terms "comprise" and "include" made in connection with Claim 10). Therefore,

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the Examiner is incorrect in contending that Claim 13 does not recite that the joint is a part of the end piece.

Additionally, since the end piece of Claim 13 is connected the adapter piece, the joint of Claim 13, as a part of the end piece, must also be connected to the adapter piece, at least indirectly. In Monti, however, there is no disclosure that both the lower end cap (46) of supporting member 14B and the clamping assembly (28) can be connected to the upper end cap (46) of supporting member 14A at the same time, which upper end cap is considered as an adapter piece by the Examiner.

Rejection of Claim 17 under 35 U.S.C. §103(a) as being unpatentable over Monti in view of Summers (US Patent 2,538,483)


In Finding 10 of the Examiner's Answer the Examiner, citing lines 1-22 of column 2 and lines 1-5 and 40-50 of column 1, contended that Summers discloses covering both the head end and threaded end of a bolt. Applicant has carefully reviewed the cited sections of Summers but could not find anything that can plausibly be construed as supporting the Examiner's contention. Additionally, Summers does not disclose the covering of the head end of a bolt, because it does not disclose a cap that covers the head end of the bolt. The caps shown in the drawings of Summers cover only the threaded end of a bolt.

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The Commissioner is hereby authorized to charge any requisite fees to
Deposit Account no. 05-1323, Docket No.: 095309.50754US.

Respectfully submitted,

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